

**BIGFORK LAND USE ADVISORY COMMITTEE**  
**Minutes – April 28, 2016 --4:00 pm**  
**Bethany Lutheran Church – downstairs meeting room**

**Present:** Susan Johnson, Joyce Mitchell, John Bourquin, Shelley Gonzales, James Bonser, Gwen Sutherland

**Present from Flathead County:** Mark Mussman, Donna Valade, Kari Nielsen

**Public:** There were 67 members of the public present.

Chairwomen Johnson called the meeting to order at 4:02 pm

The Agenda was adopted as presented (m/s: sg/jm: unanimous)

Minutes of October 29, 2015 meeting were approved (m/s: jm/bonser: unanimous)

**Administrator's Report and Announcements:**

Sign-in sheet with email address. Draft minutes and documents posted on County website: [flathead.mt.gov/planning\\_zoning](http://flathead.mt.gov/planning_zoning). Click on meeting information. Limit comments to 5 minutes, turn off cell phones, state name clearly.

**Public Comment:** None

**Application:**

**FCU-16-03** - A request from Daniel & Denise Mildren, for an after-the-fact conditional use permit for a plumbing business 'Home Occupation' located within the Bigfork Zoning District and zoned SAG-10 (Suburban Agricultural). The subject property is located at 395 Swan River Road east of Bigfork, MT and contains approximately 19.3 acres. The parcels can legally be described as Tract 2AA in Section 21, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana

**Staff Report:**

Donna Valade presented the application requesting a conditional use permit to operate a plumbing business, in a SAG-10 zoning area, using a shop for storage of plumbing supplies. The staff found that there were no environmental constraints, there is adequate parking, no fencing is required and there are no impacts of signage, lighting, sewer/water, dust, gas or hours of operation. Ms. Valade stated that as of March 29, 2016, the county received no complaints and they received 14 public comment in support of the Mildrens.

Q: JM-How much traffic

A: Mildren-Not more than 16 trips per day

Q: SG-Ever received complaints

A: Mildren-None

Chairwoman Johnson asked for agency comment. There was none. Then she asked for public comment.

**Public Comment:**

The Committee was given a letter in support of the Mildrens by Robert Carette stating the Mildrens provide impeccable service and present no negative impact to the local housing market.

**Eric Mulcahey**, Sands Surveying: Stated that the Mildrens have been running their business at this site for the past 8 years. The business operates off-site and is low impact. Employees come 2 to 3 times per week to get supplies. There are no lights, no signage and believe that the Mildrens comply with all regulations.

**Dan Mildren:** Stated that his family had been on the land for 40 years. It had been a working farm. The shop is used for storage of materials.

**Bryant Bach:** Stated that the Mildrens are wonderful people and only store things there. No impact.

With no more comment, Chairwoman Johnson closed public comment and asked for staff response. There was no staff response.

A motion was requested to accept the Findings of Fact on **Application FCU-16-03** (m/s: sg/bon: unanimous).

Q: Gonzales: Are you (Mildren) comfortable with the conditions of the application

A: Mildren: Yes

A motion was made to forward to the Board of Adjustment a recommendation to approve Application FCU-16-03 (m/s: sj/bonser: unanimous).

The vote was unanimous.

#### **Application:**

**FCU-16-04** - A request from Alana & William Myers, for a conditional use permit to establish a 'Recreational Facility, High Impact' and 'Caretaker's Facility' on two (2) parcels located within the Bigfork Zoning District and zoned SAG-5 (Suburban Agricultural). The subject properties are located at 1010 Myers Lane north of Bigfork, MT and contain approximately 10 acres. The parcels can legally be described as Tracts 4 and 4E in Section 17, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana.

#### **Staff Report:**

Mark Mussman presented the report regarding a High Impact Recreational Facility at 1010 Myers Lane. The current residence will become a caretaker facility; there is a small cabin under construction; the barn will host recreational events. The site plan shows a future restaurant, guest house and parking. He stated that the application met some, not all requirements. The county received no comments from Road and Bridge. Bigfork Fire commented that buildings are done by the State. Solid Waste stated waste must be hauled by a professional. Environment Health stated that additional review is required.

Mr. Mussman passed out a packet to the Committee members that included written comments that were received by the county after the materials were sent to BLUAC.

Q: Bonser-How can it be a caretaker's facility when the Myers have been living there for 18 years

A: Mussman-Read definition of caretaker facility

Q: Bonser-Finding #2, none of the dimensions are noted – shouldn't this all be laid out on a site plan

A: Mussman-Approximate locations are shown. BLUAC can pass onto Board of Adjustment on the adequacy of site plan.

Q: Bonser-From the 1<sup>st</sup> to the 2<sup>nd</sup> application, we still don't have answers

Q: Bonser-Will environmental factors have to be in place

A: Mussman-Yes. There are 5 restrooms and new structures proposed, commercial in nature, which will require proper building codes

Q: Bonser-Is there another request for rebuilding the barn

A: Mussman-County will need a permit of occupancy prior to the first event

Q: Gonzales-Is there a condition that there will be no weddings until approved

A: Mussman-Lots will have to be combined, restroom facilities will have to be developed

Q: Bonser-With all the complaints in 2013, wouldn't the county investigate

A: Mussman-The County did

Q: Bonser-If the county did a site review, did they go into the barn

A: Mussman-Could not get into that barn because they was too much stored in there

Q: Mitchell-Who is the true owner-application and permit show different owners

A: Mussman-Alana and William Myers

Q: Gonzales-Are we looking at 2 different items

A: Mussman-Just one request, a High Impact Recreational Facility

Q: Bonser-No porta potties will be allowed if application is approved

A: Mussman-Cannot hold weddings now, it's not an allowed use

Q: Bonser-That never stopped them before

Q: Gonzales-In a letter from Wendy Jacobs, she states that wastewater must be handled before the application is considered

A: Mussman-Looking at preliminary subdivision, people don't want to make the investment before approval

Q: Bonser-With more buildings and people, there will be lots of usage

A: Mussman-That will all be conditions of approval

Q: Bonser-Nothing has been done on the barn inspection

A: Mussman-It will require a certificate of occupancy

Chairwoman Johnson asked if the applicant had comments.

William Myers, Applicant:

Mr. Myers stated that the property is 40 acres. Their present residence will become the caretaker facility, with the barn for receptions. There is a tree strip on each side as a buffer, but may have to add more trees. He gave some history stating that in 2012 he held his daughter's wedding at the property and then friends of his daughter. County contacted them but they had weddings scheduled. They cancelled 10 weddings except those for friends and accepted a reduced payment for one wedding.

The cabin is for rental and guests and is posted on Air B&B. Mr. Myers stated that he has been trying to build integrity with his neighbors. Septic permit was received 11/27/15. Shared well agreement received 10/9/15. He is submitting an application for 26/year wedding limit, 200 guest limit, music off at 10 pm, guests gone by 11 pm, speakers to face south, no dancing at rehearsal dinner, provide P&Z with wedding schedule. Mr. Myers also stated that there are other commercial operations in the neighborhood.

Mr. Bonser stated that he would rather see a tow truck leaving in the middle of the night than 200 screaming people.

Mr. Myers stated that BLUAC members had held conversations on this application prior to meetings.

Ms. Gonzales took objection to Mr. Myers' statement and stated that BLUAC members were not holding conversations prior to this meeting.

Q: Bonser-There is no noise law but there is nuisance law (read the law)--who will enforce the conditions

A: Myers-We will

Q: Bonser-You haven't so far. Bonser read from a list of numerous complaints from past wedding events

Q: Bonser-How far away are the neighbors

A: Myers-Approximately 1000 feet. Our closest neighbor has been on our property taking pictures—we've tried to reach out to our neighbors and we pick up the garbage.

Q: Gonzales-What is the time frame of the weddings

A: Myers- 2, 3 or 4 in the afternoon then they go to barn for dinner and the music starts at 7 pm

Q: Mitchell-Will amplification last the whole time

A: Myers-Amp is just for ceremony and dancing

Q: Bonser-Who serves the liquor

A: Myers-The caterer

Q: Mitchell-What time in the day do people come

A: Myers-The day before for decorating and the day of, the main crowd comes an hour before

Q: Bonser-And caterers and deliveries

A: Myers-Yes

Mr. Bonser read a letter from Doug Averill, Flathead Lake Lodge (summary of letter):

Mr. Averill stated in his letter that weddings are not permitted in SAG-5 zoning in the Bigfork Neighborhood Plan because they have an overly negative impact to the neighboring property owners. The Lodge holds weddings and they are some of the most difficult events to manage. Weddings can bring loud music, liberal access to alcohol, difficult and combative behaviors. Mr. Averill urged the county to not open the door for weddings in SAG-5 zoning.

Mr. Bonser then read a section from the Bigfork Neighborhood Plan Summary in which the challenges of growth in Bigfork would also support and envision the nurturing of neighborhoods.

Chairwoman Johnson asked if there was any Public Agency comment. There was none. She then opened the floor to public comment.

**Public Comment:**

**Ken Kalvig**, attorney for Lance Morgan:

Mr. Kalvig passed out a large portfolio to the BLUAC members which contained a petition, documentation and testimony from residents who opposed the application. In addition, Mr. Kalvig passed out a site plan that was not included in the application as well as a visual of all neighbors who signed a petition against the application and a second visual of all the SAG-5 zoning in the Bigfork area. Mr. Kalvig stated that the applicants, Alana and William Myers have the burden to submit a complete application and they did not. He also stated that the Myers had not hired an engineer to study the handling of commercial waste water, noting that a parking area cannot cross a drain field. He stated that noise is a potential trespass. He also stated that the mitigation proposed by the Myers would not cure the impact issues. He spoke about the potential of cars and humans crossing the neighboring properties and noted that a wedding event contract is not a practical way to enforce and mitigate potential problems that might be created.

Q: Mitchell-How many people do you represent

A: Kalvig-Just one

**John Lang:** Stated that he and his family have lived through this experience in another location. The noise often went beyond midnight. It took 4 years and \$100,000 in attorney fees to stop the events. In the meantime, there was a negative impact on enjoyment of property and property values.

**Dan Elwell:** Stated that the fire issue is huge (Mr. Elwell is a volunteer with the BF Fire Department). He had been called to the property to extinguish a fire in the Myers' garage during an event which could have been very bad if not caught so soon. He also stated that cars from the event turn around in his driveway.

**Nancy Thurston** (read from her own written comments): Stated that she shares the west property line with the Myers. There has been excessive noise, drunken guests, trash, fire danger, smoking, firecrackers, drunk driving and general disrespect for neighborhood standards.

**Ray Schmidt:** Stated that he is Mr. Myers neighbor on MacGregor Lake property. He stated that the properties have a deed restriction for residential use only and that Mr. Myers converted a building on his property to a vacation rental.

**Doug Averill**, owner of Flathead Lake Lodge: Stated that it is disappointing that we are looking at an incomplete application. He also noted that drunken behavior from weddings is impossible to manage. The Lodge manages wedding events with a great deal of staff and trained security. He also noted that the fire danger from a large wedding in a dry field can be a serious threat in windy conditions. The time for volunteers to respond could be the difference in burning out the neighborhood. The risk is serious enough that the Lodge has 5 trucks and requires one or more on site at every outdoor event during fire season. He stated that Bigfork has expressed clearly in the Neighborhood Plan against this type of High Impact

Recreation Permit. He stated that Bigfork has expressed clearly in the Neighborhood Plan against this type of High Impact Recreation Permit.

**Janine Metzger**, friend: Ms. Metzger stated that she loves God and people and feels that we should not prevent the Myers from making a living and a compromise should be found.

**Gary Hastings**, owner of the Coyote Road House: Mr. Hastings is in agreement with Mr. Averill in regards to the control factor. He stated that he does a few small weddings (grandfathered in) at his establishment. There is no music and the event must be over at 8 pm.

**Lance Morgan** (provided written comment): Stated that most weddings occur between June-August. Therefore there is something going on every weekend in the summer. There are trespassing and noise issues. He stated the application should not be granted on any condition.

**Robin Ashley**: Stated that she can see the Myers' buildings from her property and can hear noise from the events in her house with the windows shut.

**Mary Thompson**: Stated she lives over a mile away from the Myers' property and can clearly hear the noise and the music, so clearly that she and her family were playing "Name that tune!" She urged BLUAC to not let the application go through.

**Mark Schiltz**: Stated that he lives ½ mile from the Myers' and the wedding event noise keeps him up at night. He stated that a wedding venue is an unmonitored drinking establishment.

**Dan deMars**: Stated that the unruly behaviors that occur at the events are unfair to the neighbors. He feels the applicants (Myers) have already demonstrated they cannot control the behavior of the wedding guests.

**Trish Eaton**: Stated that she lives across the road from the Myers. She is against the application based on all previous comments and thanked everyone for their comments.

With no more public comment, Chairwoman Johnson closed public comment.

**Staff Comment**: There was no further staff comment.

**Applicant Comment**: Mr. Myers stated that he has reached out to the neighbors.

A short recess was taken so that the BLUAC members could review the written information that was brought to the meeting by the staff and Mr. Kalvig.

The meeting reconvened at 6:55 pm

#### **Committee Discussion:**

There are 21 Findings of Fact in Application FCU-16-04. BLUAC members agreed on Findings of Fact #1-4, #7-11, and #13-21. They found issue with Findings of Fact #5, #6 and #12 and amended as follows:

Finding of Fact #5: The Committee amended Finding of Fact #5 to read:

*The parking scheme appears unacceptable due to the lack of a site plan and the future location of the drain field.* The remainder of Finding of Fact #5 remains unchanged.

Finding of Fact #6: The committee amended Finding #6 to read:

*The traffic circulation appears to be inadequate for the proposed use because of a lack of site plan and drain field location. The approaches and traffic aisles can be required to meet standards set forth in Appendix A (FCZR) regarding parking spaces and traffic aisle dimension and demarcation.*

Finding of Fact #12: The Committee amended Finding of Fact #12 as follows: *The proposed uses appear to have unacceptable impacts on public services and facilities because the barn has not been inspected by a state building inspector.*

(The Myers disagreed as they stated that the barn had been inspected, but there is no record of inspection with the County, per Mark Mussman).

A motion was requested to approve the Findings of Fact #1-12 as amended. (m/s: sj/sg: 4 yay-1 nay)

#### **Board Discussion:**

**John Bourquin** stated that he still sees noise as the main issue. A CUP for caretaker facility is a back door approach as I would guess the Myers would continue to live in their existing home. The Myers are still getting complaints from Jan and Feb 2016 for short term cabin rentals and the County had to get involved. They rent the cabin with a wedding for 30 days and then allow a hefty rebate if the cabin is only used for a few days. It appears that the Myers have a bad track record and not much regard for their neighbors. 44 trees are an inadequate sound and/or visual buffer. A contract would be unenforceable. Bourquin also stated that this application is incomplete and he is disappointed that the staff presented it in this condition. He felt that if this application gets approved, he can see the county getting sued and he resents that as a taxpayer.

**Joyce Mitchell** stated that she attempted to clear her mind of prior opinions and understands that a wedding is a beautiful thing. But the job is to go back to the Bigfork Neighborhood plan – the visions, goals and policies to manage growth and development. She noted that the plan supports alternative economic development but not to the detriment of residents. Commercial and retail service activity should be appropriate to the neighborhood character.

**Shelley Gonzales** thanked everyone who came, who wrote and who spoke. She also returned to the Bigfork Neighborhood Plan as a tool for decisions. She feels that this applicant is putting the burden of compliance on everyone else and does not feel the application conditions are supported or adequate.

**James Bonser** stated that there are too many obstacles in this application. He questioned why neighbors should endure the impact that has occurred or would occur in the future. He felt that this land use does not comply with the Bigfork Neighborhood Plan.

**Susan Johnson** stated that this was a very difficult application to review and she agreed with the comments of her fellow committee members.

A motion was made to forward a recommendation of denial on Application FCU-16-04 requested by Alana and William Myers to the Board of Adjustment (m/s: sg/jm; unanimous).  
The vote was unanimous.

Chairwoman Johnson announced that the Board of Adjustment meeting will be Tuesday, May 3 at 6 pm in the Conference Room at 1035 1<sup>st</sup> Avenue West in Kalispell.

**Old Business:** None

#### **New Business:**

Chairwoman Johnson asked that an agenda item be added to the next meeting regarding a discussion of how BLUAC can encourage residents of Bigfork for serve on the committee.

A motion to adjourn was made (m/s: sg/jb: unanimous).  
The meeting was adjourned at 7:53 pm

Respectfully submitted,  
Gwen Sutherland, Secretary